

E-FILED: February 19, 2013

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

ANDREA CASELLA,

No. C12-06310 HRL

Plaintiff,

ORDER THAT CASE BE REASSIGNED TO A DISTRICT JUDGE

ROGER AND NANCY LOLLAR,

**REPORT AND RECOMMENDATION RE
DISMISSAL FOR LACK OF SUBJECT
MATTER JURISDICTION**

Defendants.

17 Plaintiff Andrea Casella sues for alleged breach of a written contract, claiming that
18 defendants owe \$34,000. The complaint was filed on December 12, 2012 and was randomly
19 assigned to the undersigned magistrate judge for all purposes, including trial. Thus far, there
20 has been no appearance by any defendant. Casella has filed a “Motion for Summary Judgment”
21 (Dkt. No. 7), asserting that she is entitled to judgment on the ground that defendants have not
22 answered her complaint. For the reasons stated below, the undersigned recommends that the
23 complaint be dismissed for lack of federal subject matter jurisdiction and that the motion for
24 summary judgment be denied as moot.

25 Federal courts have original jurisdiction over civil actions “arising under the
26 Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. A claim “arises under”
27 federal law if, based on the “well-pleaded complaint rule,” the plaintiff alleges a federal claim
28 for relief. Vaden v. Discovery Bank, 129 S. Ct. 1262, 1272 (2009). “If the court determines at

United States District Court
For the Northern District of California

1 any time that it lacks subject-matter jurisdiction, the court must dismiss the complaint.” FED. R.
2 CIV. P. 12(h)(3). Here, plaintiff’s complaint presents claims arising only under state law. There
3 is no suggestion in the allegations that there is any basis for a federal claim for relief.

4 Nor is there any basis for diversity jurisdiction. Federal district courts have jurisdiction
5 over civil actions in which the matter in controversy exceeds the sum or value of \$75,000
6 (exclusive of interest and costs) and is between citizens of different states. 28 U.S.C. §1332.
7 Based on the allegations of Casella’s complaint, it appears that the amount-in-controversy
8 requirement is not met. And, in any event, the complaint indicates that plaintiff and defendants
9 are California citizens.

10 Because the parties have yet to consent to the undersigned’s jurisdiction, this court
11 ORDERS the Clerk of the Court to reassign this case to a District Judge. The undersigned
12 further RECOMMENDS that the newly assigned judge dismiss the complaint for lack of subject
13 matter jurisdiction. The dismissal should be without prejudice to plaintiff to seek relief in the
14 proper court. Plaintiff’s pending “Motion for Summary Judgment” should be denied as moot.

15 Any party may file objections to this Report and Recommendation within fourteen days
16 after being served. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72.

17 SO ORDERED.

18 Dated: February 19, 2013

19
20 
HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

21
22
23
24
25
26
27
28

United States District Court

For the Northern District of California

1 5:13-cv-06310-HRL Notice sent by U.S. Mail to:

2 Andrea Casella
3 5460 B Lincoln Way
Felton, CA 95018

4 Pro Se Plaintiff

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28